

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:05-CR-00253-RJC

USA

v.

ALBERT LAMONT PHARR

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ORDER

**THIS MATTER** is before the Court upon motions of the defendant pro se and through counsel for a reduction of sentence based on retroactive amendments to the United States Sentencing Guidelines regarding drug offenses, (Doc. Nos. 181, 217), and the government's response in support, (Doc. No. 221).

The defendant pled guilty to conspiring to possess with intent to distribute cocaine and cocaine base (Count One); possessing with intent to distribute cocaine base (Count Three); possessing a firearm in furtherance of a drug trafficking crime (Count Four); and possessing a firearm as a felon (Count Eight). (Doc. No. 135: Judgment). At sentencing, the Court determined that the amount of cocaine base reasonably foreseeable to the defendant was between 2.09 and 4.5 kilograms. (Doc. No. 219: Revised Supplemental Presentence Report at 1). The total offense level of 33, combined with a criminal history category of III, resulted in an advisory guideline range of 240 months, by operation of 21 U.S.C. § 851, plus 60 months for the 18 U.S.C. § 924(c) offense. (Id.). The Court imposed a sentence of 240 concurrent months on Counts One and Three, 120 concurrent months on Count Eight, and 60 consecutive months on Court Four, for a total of 300 months, the low end of the range. (Doc. No. 135: Judgment at 2).

The Court resentenced the defendant after he successfully attacked his sentence based on United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc). (Doc. No. 206: Order).

Because a prior conviction no longer qualified to enhance the sentence under § 851, the revised offense level was 31, combined with a criminal history category of IV, resulted in an advisory range of 151-188 months on Counts One and Three. (Doc. No. 215: Statement of Reasons at 1). The Court imposed 151 concurrent months on Counts One and Three, the low end of the range, and did not disturb the sentences on Counts Four and Eight. (Doc. No. 214: Amended Judgment at 2).

Under the most recent amendments to the guidelines, the total offense level for the defendant's drug offenses is 29, USSG Supp. to Appx. C., Amend. 782 (2014), resulting in an amended guideline range of 121-151 months. (Doc. No. 219: Revised Supplemental Presentence Report at 2). The defendant seeks a sentence at the low end of the guidelines, (Doc. No. 217: Motion at 2), to which the government consents, (Doc. No. 221: Response at 1).

Consistent with 18 U.S.C. § 3582(c)(2), the Court has considered the factors set forth in 18 U.S.C. § 3553(a), as well as the defendant's post-sentence conduct and the public's safety. Based on these factors, the Court finds that a reduction of the defendant's sentence would accomplish the goals of sentencing.

**IT IS, THEREFORE, ORDERED** that the defendant's motion through counsel, (Doc. No. 217), is **GRANTED** and the defendant's sentence on Counts One and Three is reduced to 121 months on each count concurrently. However, if the Bureau of Prisons credits the defendant with more than 121 months on Counts One and Three as of November 1, 2015, the sentence shall

be reduced to the time served.<sup>1</sup> The sentences on Counts Four and Eight and all other conditions remain unchanged.


**IT IS FURTHER ORDERED** that, if the defendant is released from imprisonment without a residential plan accepted by the United States Probation Office, the defendant shall submit to the local Residential Reentry Center for a period not to exceed 90 days, with work release, at the direction of the U.S. Probation Office, as a condition of supervised release.

**IT IS FURTHER ORDERED** that this Order shall not become effective until November 1, 2015.

**IT IS FURTHER ORDERED** that the defendant's pro se motion for sentence reduction, (Doc. No. 181) is rendered **MOOT** by granting the relief above.

The Clerk is directed to certify copies of this Order to the defendant, counsel for the defendant, the Community Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

Signed: October 19, 2015

  
Robert J. Conrad, Jr.  
United States District Judge



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<sup>1</sup> The defendant has approximately 129 credited months in the Bureau of Prisons (BOP), (Doc. No. 219: Revised Supplemental Presentence Report at 2); however, a sentence may not be reduced below the time a defendant has already served. USSG §1B1.10(b)(2)(C).